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The Role of the Opposition in Parliament:

The Dilemma for New Brunswick

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The October 13, 1988 New Brunswick provincial election gave Frank MacKenna's Liberal Party a clean sweep of all 58 seats in the New Brunswick Legislative Assembly. This monopoly of the Assembly by one political party creates a difficult dilemma for the parliamentary system of government. How can a system, which is adversarial in nature, function when there is no elected opposition? There have been many creative suggestions on how MacKenna may be able to deal with this difficult and delicate situation. This paper will evaluate some of these options that are now before MacKenna. To begin with, however, the paper will develop a conceptual set of roles and functions of an opposition to serve as a framework by which to evaluate the various alternatives to an elected opposition. Before examining these current options being considered, we will consider the only precedent for the New Brunswick election, namely the Prince Edward Island election of 1935. Finally, using the previously defined framework, we will evaluate the various alternatives to an elected opposition which are being considered. In conclusion, this paper will attempt to determine how best to deal with the situation in New Brunswick.

The Role of the Opposition

The parliamentary system of government is one of the oldest models in existence, and its development and evolution has a long history. For our purposes it is not necessary to delve deeply into the historiographics of parliamentary democracy. The essential principals of a parliamentary system, and in particular the function of the opposition, are of more relevance in our discussion.

The adversarial nature of parliament is one of the basic foundations of the system. Once it was the case that the Parliament was in confrontation with the monarch, but as the real power of the monarch eroded the focus of conflict and debate shifted to within parliament and the various factions within the Houses. Since the late

nineteenth century these factions have evolved into highly cohesive political parties which generally behave as a unified bloc in parliament. Thomas Hockin has described this transition in terms of "flexible and structured parliamentarism".[1] The flexible parliament was one in which there was weak party discipline and the executive was in constant danger of being defeated in the house. As a consequence of these loose party lines, and the constant potential for a vote of non-confidence, the opposition had a more direct control over the governing executive of the day. Today, however, parliaments are characterized by: strong party lines; a strong executive, and; a resulting lessening of direct power by the opposition parties. Only in cases of minority governments can the opposition parties actually threaten the defeat of the government in the house. This is not to suggest that the opposition has no power or control over the government of the day. Oppositions have developed new functions and roles over the years along with new methods of achieving their aims. The role of the opposition remains central in a parliamentary system which lacks the "checks and balances" which are built into other systems such as the presidential system. The opposition has a duty in the parliamentary system to serve as a check and balance on the government and to ensure that democratic principals are upheld between elections. As Stanely Knowles once remarked:

> Democracy is not real unless the force of public opinion is brought to bear not only on the choice of government once every four or five years but on legislative process month in and month out, day in and day out, during the time between elections.[2]

The opposition has become essential in ensuring responsible and accountable government. Indeed, Hockin considers that the opposition has a central constitutional

[1] Thomas Hockin, "Flexible and Structured Parliamentarism: From 1848 to Contemporary Party Government," Journal of Canadian Studies, (Vol. 14, Summer 1979).

[2] Stanley Knowles, The Role of the Opposition in Parliament, (Toronto: Woodsworth Memorial Foundation, 1957), p. 5

role in responsible government:

> The constitutional essence of responsible government in Canada today probably includes the following: the government most command a regular majority in the House of Commons; the government must attempt to answer questions and criticisms in Parliament; the government must allow the opposition to scrutinize government action and to debate urgent and important matters at periods both timely and lengthy enough to expose the major arguments; and elections must be held at least once every five years.[3]

Hockin sees that both the government and the opposition have certain rights and certain obligations, and that both parties must fulfill their obligations if there is to be responsible government. Gerald Schmitz takes this concept a bit farther when he describes the function of parliament:

> Parliament exists not only to transact the business of the state, but to provide a forum in which all legitimate points of view can be expressed. The government has a right and duty to govern. The opposition's right and duty is to oppose the government's policies and practice by every legal parliamentary means, if the public interest is at stake.[4]

Parliament functions as a forum for debate and deliberation, and it is the duty of both the government and opposition to contribute to this forum. The government must present its policies and programs to parliament, and it is conversely the duty of the opposition to represent public concerns regarding these policies and programs. The opposition is the embodiment of one of the fundamental principals of democratic government that the majority rules, but does so with respect for the concerns and rights of the minority. It is clearly the role of parliament, and in particular the opposition, to

[3]Thomas Hockin, "Flexible and Structured Parliamentarism: From 1848 to Contemporary Party Government," Journal of Canadian Studies, (Vol. 14 Summer, 1979), p. 14.

[4]Gerald Schmitz, The Role of the Opposition in a Parliamentary System, (Ottawa: Library of Parliament, 1982), p. 5.

ensure that the concerns of the minority are considered in formulating public policy. Expanding upon this, it is also the role of the opposition to "...articulate the needs of unorganized and inarticulate groups."[5] Perhaps then this will be our first definitional function for an opposition; to ensure that diverse and opposing points of view are represented in the formulation of public policy, which we shall call the Representative Function.

The second function of the opposition is to ensure that the government follows due process in governing, or to serve as a Check on the power of the government. The opposition should "...act as a brake on government haste, to ensure that all legislation receives the due process of parliamentary deliberation."[6] As mentioned the executive in the parliamentary system has almost unlimited powers, and there are very few checks and balances built into the system to ensure that these powers are not abused. The opposition's role in this matter is therefore essential in ensuring that governments do not abuse their power and authority. It is the function of the opposition to investigate any suspected government abuses of power. Knowles has noted that:

> By the very nature of things we [the opposition] are the receivors of complaints from civil servants, taxpayers, farmers, workers, businessmen, veterans, pensioners and others who are dissatisfied with any aspect of government administration. It is our task to check on such complaints and to try and keep the government on the rails.[7]

This not only means that government must obey the rule of law and due process, but also

[5]Thomas Hockin, "Adversary Politics and Some Functions of the Canadian House of Commons" in Kruhlac, O. et al., eds. The Canadian Political Process, 3rd Edition, (Toronto: Holt, Rinehart and Winston, 1979), p. 325.

[6]Schmitz, op cite, p. 5.

[7] Knowles, op cite, p. 9.

that the government behave with integrity and honesty. An opposition ensures that the government remains accountable to both Parliament and the electorate. The opposition in this case has a duty to use all legal means to expose any wrong doings and to ~~service~~ serve as a check on any abuses of power.

The third function of the opposition is to Prod the government into taking action. Often times the opposition will be in a better position than the government to articulate the needs and desires of certain sectors of society. It is the obligation of the opposition to prod the government to take action on issues of public interest and importance.[8] The realities of office tend to cause governments to lose vision and the motivation for change and often they are quite slow to make policy and program changes which are desired by society.[9] It is far more comfortable in many cases to remain with the status quo than to implement changes, and it is therefore the role of the opposition to prod the government of the day into developing and adopting new policies and programs.

The fourth function of the opposition is to present alternatives to the present government; or in other words to present itself as an Alternative ~~for~~ to the current government. The opposition should be seen as a government in waiting. This entails presenting policies and platforms as alternatives to the current government's policy. It also requires that "the opposition attempt to re-interpret the government's performance in a way different from the government's own interpretation."[10] This independence is extremely important for obviously the government will be biased in favour of itself in any assessment it makes of its own performance. It is upon the opposition to provide an

[8]Hockin in Kruhlak et al., eds., op cite, p. 325.

[9]Knowles, op cite, p. 9

[10]Hockin in Kruhlak, et al., eds., op cite, p. 325

alternative view and interpretation of government policy. The opposition will also have differing assessments of "facts", and again it is the function of the opposition "...to offer alternative solutions to problems based on an independent assessment of facts and opinions."[11] It is central to democracy that there not be any monopoly of ideas and opinions. The opposition ensures that there are competing interpretations of government action and daily events.

In summary, the four basic functions of an opposition are: to Represent society; to place a Check on the government; to Prod the government into taking action, and; to present itself as an Alternative to the government. We will use these four functions later to assess the various alternatives to an elected opposition which have been presented to Frank MacKenna. First, however, we should consider the case of Prince Edward Island as a precedent for New Brunswick.

The Prince Edward Island Precedent

In the provincial general election of 1935 the Liberals under Walter Lea won all thirty seats in the Prince Edward Island Legislative Assembly and for the first time in Commonwealth history a legislature was faced with no elected opposition. Curiously, however, almost no studies have been done on the Liberal Government of 1935, and unfortunately Prince Edward Island does not have Hansard and as such a complete record of events during that period are not available. From all accounts, however, it does not seem that the government made any extraordinary provisions or adjustments to offset the lack of an elected opposition.

[11] Micheal Atkinson and Graham White, "The Development of Provincial Legislatures," Clarke et al., eds., Parliament, Policy and Representation, (Agincourt, ON: Metheuen Publications, 1980), p. 257

In day to day operations, the Liberal Caucus would meet in the Assembly Chamber with the Premier in the Chair and when it came time for the House to meet, the Speaker would replace Campbell in the Chair at which point "the House would then give formal expression to what its members had already decided in caucus."[12] Members were encouraged to express their opinions freely as Walter Jones, the future Liberal Premier of P.E.I. once said; "We lack an opposition party and it is the duty of members of this House not to save criticism of their executive."[13] At first there seems to have been very little debate or open opposition in the House:

> In the session of 1936, for example, the "debate" on the address in reply to the Speech from the Throne consisted only of speeches from the mover, the seconder, and the Premier, and the budget "debate" was a solo effort on the part of the Provincial Secretary-Treasurer.

and;

> During the first year the proceedings were uneventful and there were few divisions, but by the second and third sessions a number of the more restive members had begun to assume the duties of an un-official opposition.[14]

On a few issues there developed more debate and the un-official opposition became bolder in subsequent years. M.L.A., and later Senator, J.P. McIntrye, noted that there were "plenty of opponents in our own party and I think that some of our own party members gave us more trouble than we would have had if there had been a half dozen Conservatives in the House."[15] In general, however, it doesn't seem that there were any

[12]Wayne MacKinnon, The Life of The Party: A History of the Liberal Party in Prince Edward Island, (Summerside:Williams and Crue, 1973) p. 102.

[13] Wayne MacKinnon, op cite, p. 103.

[14]Frank MacKinnon, The Government of Prince Edward Island, (Toronto:University of Toronto Press, 1951), p. 190

[15]Hon. J.P. McIntrye, Senate Debates, February 20, 1951.

major splits in the Liberal party, and most of the government's business went ahead without any great debate or opposition. In most cases it seems that "... criticisms did not lead to any serious splits within the party, and they were, on the whole, lightly regarded, for the Legislature needed something upon which to debate..."[16]

It is difficult to use Prince Edward Island as an example for modern times. Considering the limited role of government during the era and the unique qualities of P.E.I., it is not difficult to understand how the legislature could operate without an opposition. It is interesting to note, however, that Liberals did remain in power in Prince Edward Island for decades after the 1935 election. One can only assume that the Liberal government did not abuse its unlimited powers, and thereby won the trust of voters, or that the lack of an opposition permitted any faults in the Liberal administration to go unnoticed by the public. Unfortunately, politics today are much more complex, as is the operation of government, and as such the P.E.I. example holds no real significance for the situation today in New Brunswick.

The Options for New Brunswick

There has been a great deal of very creative speculation on how Frank MacKenna should deal with the dilemma in which he finds himself. The Liberal's have established a caucus committee to examine the various possible alternatives to an elected opposition and their report to the Premier will be made by early February.[17] We will examine a few of the major options which are under consideration and evaluate them in terms of the four functions of an opposition we have already developed. One must not only consider the effectiveness of each of these options, but also one should consider the side-

[16]Frank MacKinnon, op cite, p. 191.

[17]It has not yet been decided if this report will be made public.

effects of any action. Any changes in the operation of the Assembly as a result of this unique situation should not set undesirable precedents which could impair the operation of a future government in an Assembly with an elected opposition. It is with these factors in mind that we should evaluate the various alternatives.

The most obvious option open to MacKenna is to simply do nothing. There is no legal requirement that he must provide mechanisms to replace the functions of an elected opposition. The Assembly does not legally or procedurally require an opposition to function. Some would argue that the Liberals won 58 seats and as such have the full confidence of the people of New Brunswick. This of course ignores the fact that nearly forty percent of the electorate in New Brunswick did not vote for the Liberals.[18]

In evaluating this option it is clear that the representative function would be not be completely fulfilled under this alternative. It is true that such a large caucus would certainly be quite representative of a large portion of society but in the final analysis the minority under this alternative would not have a very well defined voice in the Assembly. Nor would there be any direct checks on the government. Only public opinion and the spectre of a distant election would prod the Liberals into producing policy and programs desired by the electorate. The other political parties could continue to present themselves as an alternative to the Liberals, however their ability would be limited by lack of funds and the lack of the public forum of the Legislature. In all counts this option, which is not dissimliar from the course taken by the Liberals in Prince Edward Island in 1935, does not adequately fulfill any of the critera we have developed for an effective alternative to an elected opposition. It is, however, the "safest" alternative in

[18]Clearly this points-out the fact that the electoral system requires some major reforms. Situations such as the present one in New Brunswick make strong arguments for reforms such as proportional representation.

terms of not setting any precedents which might place restrictions on future governments. Finally it is doubtful if the public would accept this proposal, and it is clearly quite politically unattractive for the Liberals in terms of a public backlash. In summary, although this option is feasible it would not provide a legitimate alternative to an elected opposition.

A second option which has been promoted is that MacKenna "appoint" an opposition from within his caucus. It would be unclear how effective an appointed opposition would be considering that they would continue to have the same basic ideological perspective as the government. There is also the question as to how fair this would be to both the M.L.A.s appointed to the opposition, and to their constituents who elected a government member. This also raises concerns on how this type of opposition could fulfill the representative function since the M.L.A.s could not be expected to simply change their perspectives and ideologies in order to provide an effective opposition. An appointed opposition could serve quite well as a check on the government, but again the problem remains that such an opposition, because they are of same ideological stripe as the government, would not be as vigourous in investigating the government's activities. The "opposition" would have the ability to prod the government quite effectively under this model, although the policy options considered would not be nearly as diverse as with an elected opposition. It is unclear if this appointed opposition would serve as an alternative to the government. One would assume that the "opposition" would return to the Liberal party in the event of an election, but it might be possible that this group would form a splinter party and run against the Liberals. This is the crux of the matter; this appointed opposition would always remain, in the final analysis, a group of Liberals and as such their effectiveness and independence as an opposition would always be in question. There is a problem with this option for MacKenna and that is that it would have a negative impact on the unity and solidarity of

his party. It would be difficult to appear as a unified party in an election and the potential for a splinter party to form has already been mentioned. In summary, this alternative would only provide for a limited fulfillment of the functions of an elected opposition, and there is a good possibility for severe damage to the long-term effectiveness of the Liberal party.

The third option to consider is the one supported by the Progressive Conservative and New Democratic Parties of New Brunswick. In essence the proposal is for the government to provide funds for research and support staff to the two Parties. The Conservatives have been specific in their request for office space and support staff:

> Staffing services would include two positions for research, two secretarial positions, an office supervisor and a translator. A suitable budget provision should be made for office equipment. Our proposal is that the budget provisions be administered by the Clerk's Office, as has been done in the past, under the supervision of the Legislative Administration Committee.[19]

The Conservatives also are proposing some changes in policies which would permit them to observe and take notes in the Gallery of the House (currently not permitted in New Brunswick). In addition the Conservatives suggest that opposition representatives be allowed to "attend and ask questions of Deputy Ministers during considerations of the Public Accounts, in the Committee on Public Accounts."[20] Finally, they propose that all major legislation be referred to "the Committee on Law Amendments, where Ministers would be required to defend their Bills and where an Opposition representative would have the right to ask questions and offer statements, but of course, with no right of proposing motions or amendments."[21]

[19]Malcolm MacLeod, Press Release by the Leader of the Progressive Conservative Party of New Brunswick, Fredericton, January 6, 1988.

[20]ibid.

This proposal would satisfy all of our conceptual critera for an effective opposition. In particular, public input into Legislation and the Budget via the expanded committee system would provide a partial replacement for all four of our function of an opposition. The danger would be that only those groups with the funding, or a great deal of resolve would have the ability to mount an effective presentation to one of these committees. In this sense it would be desirable to fund the opposition parties in hopes that they would act on behalf of those groups who do not possess the resources to be effective participants in the committee process. One would, however, have to question the right of non-elected officials to actually sit on these committees. On the other hand ~~there~~ it would be a method by which to overcome the limitations of the opposition not having an actual voice in the House by being able to express their opinions and ask questions in these expanded committees. There is also the limitation on this sort of opposition in that they would not have the legal rights and privileges accorded to elected M.L.A.s such as filing Motions for Return. The entire system would require that the government cooperate with the opposition by providing information and actually attending the expanded committee meetings.

There are some serious problems with this proposal in that it sets a major precedent in according privileges, normally accorded only to elected officials, to non-elected officials. The conflict has already surfaced in New Brunswick where the Conservatives are arguing that funding should only be provided for their party and not the New Democrats. The New Democrats counter this argument by stating that they have just as much right to funding as the Conservatives. The New Democrats argue that they did win the same number of seats as the Progressive Conservatives - zero - and

21 ibid.

therefore should be equally considered for funding. Obviously some sort of funding would be required if the opposition parties were expected to function effectively. The funding should only be provided for research and support staff which would have been provided to the opposition parties had they won seats. If the Liberals do provide funding it may open a Pandora's Box where every political party will demand government support. Furthermore, if one funds political parties, there is an argument for funding interest groups. Obviously if any funding is provided it will have to be provided with strict conditions. MacKenna perhaps could specify that only parties receiving a certain percentage of the vote in the last election would be eligible for funding.

In general the proposal put forward by the Progressive Conservatives would create a somewhat effective alternative to an elected opposition, however, this plan must be implemented with great care as to not set any precedents which might give non-elected groups privileges reserved for elected officials.

Another solution is to utilize existing institutions as partial replacements for an elected opposition. Telegraph-Journal columnist, Don Hoyt, has offered such a plan in which four existing institutions would be employed:

> While it may slow the process of governing, expanded mandates of legislative committees, including a requirement of public hearings prior to enactment of legislation and passage of the budget, might provide an element of protection against bad laws and spending abuses.
>
> The role of the Ombudsman, who has limited authority to examine citizen complaints and open some government files, should be re-studied to determine if a broadening of his mandate could add a stronger check on the system.
>
> ...the Auditor-General be given greater authority to determine and report on whether the province was getting proper value from its expenditures.

> [The Right to Information Act] should be reviewed from the perspectives of removing some of the restrictions and facilitating the process of getting government documents. It may be time to consider the appointment of an Information Commissioner.[22]

The expanded functions of the committees is not dissimilar from the Progressive Conservative proposal and the same questions raised regarding that proposal apply equally to Hoyt's proposal. Hoyt's ideas for expanding the power of the Ombudsman would be an effective partial replacement for the checking and representative functions of an opposition. One could not argue against an expanded role for the office of the Ombudsman even in a normal Assembly with a large opposition, and therefore such a move would not set any unwelcome precedents. A similar argument can be made for an expanded role for the Auditor-General. Indeed, it seems that the New Brunswick Liberals, while in opposition, called for just such reforms of the Auditor's office. The Auditor-General by having the power to determine if the province got value for their expenditures would be an effective check on government expenditure. The expansion of access to information would be of assistance to the media and opposition parties in probing into government activity. This would lessen the expense of performing much of the activities required of the media and the opposition in providing both a check on government and in performing the function of providing alternative views of government activity. In general, with better information the quality of opposition would be improved. As with the other reforms there would be no precedent set which would place unreasonable restraints on future governments. All of these reforms could (and should) be implemented in any democracy and MacKenna would be wise to follow Hoyt's advice in any event. In summary, Hoyt's proposals are sound and worthy of further attention.

[22]Don Hoyt, "The Size of Liberals' Dilemma More Apparent," in Telegraph-Journal, Saint John, November 7, 1987, p. 4.

There have been other suggestions such as MacKenna allowing the leaders of the Progressive Conservative and New Democratic Parties to sit as non-voting members in the House. This would set a precedent that would not be acceptable, and the same results could be achieved by allowing the leaders to simply sit in the Gallery. Another suggestion has been that MacKenna ask some of his members to resign and allow the opposition parties to win seats in uncontested by-elections. Again, this would not be fair to those M.L.A.s asked to resign and their constituents. The basic fact is that the New Brunswick electorate elected 58 Liberals to represent them and this should not be denied in a artificial by-election held simply to provide an opposition. There are many other suggestions, but the above listing represent the most realistic options which are available.[23]

Conclusion

There have been many interesting suggestions as to how best provide for the functions of an opposition in New Brunswick. We have established the importance of an effective opposition in a parliamentary system of government. We have also established that there are certain functions that an opposition should perform. In considering the various options we must consider not only how effectively the suggestion will fulfill the functions of an opposition, but also if the suggestion is within the bounds of constitutional and political constraints. Any solution must be able to provide a level of effective opposition, but it must not impact the proper functioning of future governments who will face an elected opposition.

[23]Speaker Fraser of The House of Commons suggested that a group of backbench Liberal M.L.A.s should form their own splinter party and take advantage of the privileges (and salaries) of the Official Opposition.

Considering all of the above factors, the most desirable solution would entail the following:

1. Provide funding, based on popular vote received in the last general election, for both opposition parties. This would be provided with the stipulation that such funding would only provided for this one unique situation. All funds would be administered by the Clerk of the House to ensure that public monies are spent only on research and support staff for the opposition Parties;

2. The committee system should be expanded to allow public submissions, including those from the opposition parties. All major legislation should be referred to public hearings before a final draft is enacted. Opposition representatives should not be allowed to sit on the Committees, but would be allowed to make submissions and to observe all proceedings;

3. The Offices of the Auditor-General and Ombudsman should be expanded as proposed by Don Hoyt. Hoyt's suggestions for an expansion of the Right to Information Act should also be adopted;

4. Representatives of opposition parties would be allowed to take notes in the Gallery. It would also be desirable to have the proceedings of the House televised and thereby open the operation of the Assembly to scrutiny by the general public, and;

5. MacKenna should expand the role of his caucus in formulating policy, and permit his caucus to express their opposition to any government actions with which they object.

These steps would give New Brunswick a good substitute for an elected opposition while at the same time not creating any serious precedents which might tend to shackle the operation of future governments. A careful balance must be found between providing an effective opposition and maintaining respect for the traditional roles, privileges and rights of elected members. It will be very interesting to see how Mr. MacKenna will actually deal will this dilemma of democracy in which New Brunswick finds herself.

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